

**THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Civil Action No. 20-40042

MICHAEL LOCONTO

Plaintiff

v.

DEPARTMENT OF TRANSITIONAL ASSISTANCE
Defendant

**COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, Michael Loconto (hereafter “Loconto”) hereby submits this Complaint against the Defendant by and through his attorney Gregg S. Tarayan, Esq., and states as follows:

INTROCUCTION

1. Loconto brings this action against the defendant, The Commonwealth of Massachusetts Department of Transitional Assistance (hereafter “Employer” or “DTA”) for age discrimination, retaliation, and breach of contract, and for Loconto’s discriminatory, retaliatory, and wrongful employment termination in 2019.

PARTIES

2. Plaintiff Loconto is an individual, over the age 40, residing in Grafton, Worcester County, Massachusetts.
3. Defendant Department of Transitional Assistance is an agency of the Commonwealth of Massachusetts with a principal office at 600 Washington Street, Boston, Suffolk County, Massachusetts 02111.

JURISDICTION

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is also authorized and instituted pursuant to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b)(the “ADEA”), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.
5. The employment practices alleged to be unlawful were committed within the

jurisdiction of the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. § 1391(b).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

6. On or about May 14, 2018 Loconto filed a Charge of Discrimination with the Massachusetts Commission Against Discrimination (“MCAD”).
7. The U.S. Equal Employment Opportunity Commission (hereafter “EEOC”) had adopted MCAD’s final decision, and issued its DISMISSAL AND NOTICE OF RIGHTS on or about January 15, 2020 which the plaintiff received in the mail on or about January 20, 2020.

STATEMENT OF FACTS

8. Loconto was employed continuously by DTA at its Worcester, MA office as a Cash Worker / Benefit Eligibility and Referral Social Worker C (“Cash/BERS”) for over 27 years.
9. During all relevant times Loconto was over the age of forty, and DTA was an employer subject to the provisions of ADEA.
10. Loconto was involuntarily suspended without pay on or about February 27, 2018, and his employment was terminated by DTA on or about April 26, 2019.
11. During all relevant times, Loconto always satisfactorily performed his duties that met or exceeded DTA’s performance standards.
12. At all relevant times, DTA and the Service Employees International Union, Local 509 Union (“Union”), were parties to a collective bargaining agreement (“CBA”).
13. At all relevant times, Loconto was a member of Union in good standing and subject to the CBA.
14. Carlos Resto (“Resto”), who is in his thirties, is the Assistant Director at the DTA Worcester office, and at all relevant times he was Loconto’s manager.
15. From December of 2014, when Resto assumed a key role in the management of the DTA Worcester office, through his termination, Loconto’s performance continued to meet or exceed DTA’s performance standards.
16. Despite Loconto’s continued good performance, Resto embarked on a campaign to discredit his good work as being inefficient with respect to his case load and intakes (walk-in clients).

17. Resto was aware that Loconto was receiving a significantly higher and more complex case load as compared to all other case workers.
18. Loconto and Resto had frequent meetings where Resto declared Loconto's performance was substandard yet Loconto continued to receive above-standard ratings and reviews as a matter of record up to 2017.
19. In accordance with Resto's private policy and management style, the occurrence and substance of these meetings never became a part of Loconto's employee file.
20. In fact, Loconto's performance has increased as he successfully processed his increased case load by continuing to meet the deadlines imposed in prior years with substantially lower case loads.
21. Loconto processed his case load with "exemplary" attention to detail.
22. On or about August 10, 2017 DTA prepared Employee Performance Review Form ("EPRS") which for the first time in his entire 27 year career alleged that Loconto's performance was in any manner substandard.
23. Despite the fact that the August 10, 2017 EPRS Review attributes poor performance, the rationale cited for the poor performance revealed a bias against Loconto and corroborated his disparate treatment at DTA.
24. In retaliation for exposing this bias, DTA targeted Loconto with an involuntary leave of absence, and ultimately terminated his employment.
25. Despite Loconto's repeated and overwhelming evidence presented at all of the February, 2018 meetings, Resto persisted in the "correction" of Loconto's poor performance, and Loconto requested for time management training.
26. On February 26, 2018, Loconto attended what was scheduled as, and what he thought was, a time management training session.
27. Instead, the meeting was an orchestrated prelude to his unannounced and unanticipated forced suspension from work on the following day.
28. In fact, Loconto returned to work on the afternoon of February 26th
29. Loconto reported to work the morning of the 27th as usual.
30. However, without prior notice he was all of a sudden placed on an involuntary leave of absence and escorted by security out of the workplace in the presence of his coworkers.
31. On or about March 2, 2018 Loconto received a letter from DTA outlining the reasons of

his involuntary and unpaid placement on leave of absence by referencing his conduct at the February 26, 2018 meeting in an attempt to mischaracterize the disparate treatment and operate as the pretextual reason for his forced leave of absence, and eventual termination.

32. The March 2, 2018 letter (“Letter”) invoked Article 8 Section 1(N) of the CBA in that Loconto was placed on leave due to DTA’s arbitrary assessment that Loconto is mentally unfit.
33. The Letter advised Loconto that, in order to return to work, he must “undergo a full medical/psychological evaluation”
34. Article 8 Section 1(N) of the CBA addresses the protocol with respect to obtaining the required medical/psychological evaluation.
35. In violation of the above provision, DTA unlawfully terminated Loconto’s employment.

COUNT ONE
AGE DISCRIMINATION – (M.G.L. c. 151B § 4(1))

36. Plaintiff realleges and incorporates by reference paragraphs 1-36 of this Complaint as if fully stated herein.
37. By assigning a greater volume of cases with inherent higher complexity to Loconto as opposed to the younger employees, DTA treated Loconto differently than the younger employees, thereby discriminating against him on the basis of his age.
38. Further, DTA has not articulated a legitimate reason for the above-described discriminatory actions that eventually resulted in Loconto’s termination.
39. DTA’s adverse actions leading up to his termination were also pretextual and constitute unlawful discrimination on the basis of age in violation of M.G.L. c. 151B § 4(1) and/or other applicable employment-related laws and/or regulations.
40. As the direct and proximate cause of Defendant’s conduct, Plaintiff suffered damages.

COUNT TWO
AGE DISCRIMINATION
AGE DISCRIMINATION IN EMPLOYMENT ACT – 29 U.S.C. § 621 et seq.

41. Plaintiff realleges and incorporates by reference paragraphs 1-40 of this Complaint as if fully stated herein.

42. By assigning a greater volume of cases with inherent higher complexity to Loconto as opposed to the younger employees, DTA treated Loconto differently than the younger employees, thereby discriminating against him on the basis of his age.
43. Further, DTA has not articulated a legitimate reason for the above-described discriminatory actions that eventually resulted in Loconto's termination.
44. DTA's adverse actions leading up to his termination were also pretextual and constitute unlawful discrimination on the basis of age in violation of Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA") and/or other applicable employment-related laws and/or regulations.
45. As the direct and proximate cause of Defendant's conduct, Plaintiff suffered damages.

COUNT THREE: RETALIATION

46. Plaintiff realleges and incorporates by reference pars. 1-45 of this Complaint.
47. Plaintiff participated in protected activities.
48. Sometime in 2017 Loconto became a union steward of Employees International Union, Local 509 Union.
49. In that capacity, he participated in an advocacy role in his alert to DTA management of age-based disparate treatment by DTA of at least two of Loconto's coworkers who were subjected to disparate treatment which adversely affected their employment.
50. Defendant had actual knowledge of plaintiff's participation in protected activities.
51. Defendant retaliated against the plaintiff by, inter alia, subjecting him to unfair and unjustified treatment, isolation, discipline, hostility, and discharge.
52. Defendant's unlawful conduct violates both ADEA and M.G.L. c. 151B.
53. As the direct and proximate cause of Defendant's conduct, Plaintiff suffered damages.

COUNT THREE: BREACH OF CONTRACT

54. Plaintiff realleges and incorporates by reference pars. 1-49 of this Complaint.
55. Loconto's terms of employment were subject to certain rules and regulations as stated in CBA.
56. Loconto has always been in compliance with his obligations under the employment

contract with DTA.

57. By pretextually and in bad faith declaring Loconto to be unfit for duty, and failing to act in compliance with Article 8, Section 1 (N) of the CBA, DTA breached the employment contract.

58. Loconto suffered damages as a result of the aforementioned breach.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff hereby prays that this Honorable Court award him the following relief:

1. Compensatory damages;
2. Punitive Damages;
3. Prejudgment and post-judgment interest;
4. Attorney's fees;
5. Costs of this action; and
6. Such further relief as this Court deems fair and just.

JURY DEMAND

Plaintiff demands a TRIAL BY JURY on each claim and issue so triable.

Dated: April 14, 2020

/s/Gregg S. Tarayan

Attorney for Plaintiff
Gregg S. Tarayan, Esq.
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gtarayan@gmail.com

JS 44 (Rev. 08/18)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michael Loconto

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gregg S. Tarayan, 60 Island Street, Lawrence, MA 01840; 978-566-9153

DEFENDANTS

Massachusetts Department of Transitional Assistance

County of Residence of First Listed Defendant Suffolk
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing. Age Discrimination in Employment Act, Retaliation in Employment, and Breach of Contract
 Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint. JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 04/14/2020

Gregg Tarayan

Digitally signed by Gregg Tarayan
 DN: cn=Gregg Tarayan, o=Gregg S. Tarayan Attorney at Law, ou, email=gtarayan@gmail.com, c=US
 Date: 2020.04.14 14:09:56 -0400

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Michael Loconto v. Department of Transitional Assistance

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

☐

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

☒

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

☐

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES

☐

NO

☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES

☐

NO

☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES

☐

NO

☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES

☐

NO

☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES

☒

NO

☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division

☐

Central Division

☒

Western Division

☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division

☐

Central Division

☒

Western Division

☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES

☐

NO

☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Gregg S. TarayanADDRESS 60 Island Street, Lawrence, MA 01840TELEPHONE NO. 978-566-9153